

UNITED STATES DISTRICT COURT

District of GUAM

UNITED STATES OF AMERICA

v.

JOSEPH G. TUNCAP

Date of Original Judgment: June 7, 2004

(Or Date of Last Amended Judgment)

Reason for Amendment:

Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
 Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
 Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
 Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

**THIRD AMENDED JUDGMENT
IN A CRIMINAL CASE**

Case Number: CR-98-00307

USM Number: 00417-093

RICHARD P. ARENS

Defendant's Attorney

Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
 Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
 Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
 Direct Motion to District Court Pursuant 28 U.S.C. § 2255 or 18 U.S.C. § 3559(c)(7)
 Modification of Restitution Order (18 U.S.C. § 3644)

FILED

DISTRICT COURT OF GUAM

APR 23 2007

MARY L.M. MORAN
CLERK OF COURT

THE DEFENDANT:

pleaded guilty to count(s) I, II, III, IV, V & VI

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section 18:1344 & 18:2 **Nature of Offense** BANK FRAUD

Offense Ended 03/31/98 **Count** I, II, III, IV, V & VI

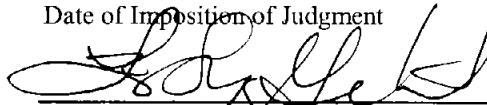
The defendant is sentenced as provided in pages 2 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____
 Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

February 17, 2005

Date of Imposition of Judgment


Signature of Judge

FRANCES M. TYDINGCO-GATEWOOD, CHIEF JUDGE

Name and Title of Judge

APR 23 2007

Date

ORIGINAL

DEFENDANT: JOSEPH G. TUNCAP
CASE NUMBER: CR-98-00307

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term
125 Month(s).

The court makes the following recommendations to the Bureau of Prisons:

WHILE IN PRISON, THE DEFENDANT SHALL PARTICIPATE IN A SUBSTANCE ABUSE PROGRAM APPROVED BY THE BUREAU OF PRISONS.

DEFENDANT SHALL ALSO BEGIN TO MAKE RESTITUTION PAYMENTS WHILE IMPRISONED.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSEPH G. TUNCAP
CASE NUMBER: CR-98-00307

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **60 Months.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.

DEFENDANT: JOSEPH G. TUNCAP
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ADDITIONAL SUPERVISED RELEASE TERMS

*Defendant shall pay restitution in the amount of \$104,354.58 to the victims in the attached. Restitution payments shall be made to the U.S. District Court of Guam, Attention: Clerk of Court, for disbursement to the victims.

Defendant shall perform 400 hours of community service.

Defendant shall participate in a drug treatment program approved by the U.S. Probation Office for treatment of narcotic addiction or drug or alcohol dependency which will include testing for the detection of substance abuse.

Defendant shall obtain and maintain gainful employment.

DEFENDANT: JOSEPH G. TUNCAP
CASE NUMBER: CR-98-00307Judgment — Page 5 of 9**CRIMINAL MONETARY PENALTIES**

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 600.00	\$ -0-	\$ 104,354.58

- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Payless Supermarkets, Inc. 118 Agana Shopping Center Route 4 Agana, Guam 96932 Attn: Larry Moen, Comptroller		\$58,153.67	
D.S. Corporation dba Bunny Market P.O. Box 22887 Guam Main Facility 96921		\$8,363.42	
First International Corporation dba A-1 Store P.O. Box 6064 Tamuning, Guam 96931 Attn: Tony Chou, Financial Manager		\$450.65	
TOTALS	\$ _____	\$ <u>104,354.58</u>	

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest, and it is ordered that:
 - the interest requirement is waived for the fine restitution.
 - the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOSEPH G. TUNCAP
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ADDITIONAL RESTITUTION PAYEES

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Rustan's Foreign Exchange 141 W. Achote Court Liguan Terrace, Dededo, Guam 96912 Attn: Helen Valencia, Owner		\$859.25	
New J Market P.O. Box 22331 Guam Main Facility 96921		\$2,187.57	
Townhouse Department Store P.O. Box 7 Agana, Guam 96932 Attn: Leo Roldan, Comptroller		\$12,534.75	
Guam Savings & Loan Association P.O. Box 2888 Agana, Guam 96932 Attn: Juan Lizama, Vice-President		\$3,500.25	
Kim Chee Store nka Kim Chee Warehouse Grocers P.O. Box 2031 Agana, Guam 96910		\$3,794.78	
Valencia Foreign Exchange aka Valencia Bros. Foreign Exchange P.O. Box 11411 Tamuning, Guam 96931 Attn: Ruel Valencia, Owner		\$5,083.69	
Chamorro Mart 231 Buena Vista Avenue Dededo, Guam 96912		\$497.15	
Deloitte & Touche 361 South Marine Drive Tamuning, Guam 96911		\$991.40	
MV Panglinan Enterprise P.O. Box 101 Agana, GU 96932 Attn: Abe Disuturun, Chief Accountant		\$5,528.00	

* Findings for the total amount of losses are required by Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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ADDITIONAL RESTITUTION PAYEES

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Guam Supermarket P.O. Box 21058 GMF, GU 96921		\$2,410.00	
Gino's-Dioni's c/o Mr. Paul Sachdev 541 So. Marine Drive Tamuning, Guam 96911		\$0.00	
Paul's Tailors c/o Mr. Paul Sachdev 541 So. Marine Drive Tamuning, Guam 96911		\$0.00	
Uttam's Inc. 314 East Marine Drive Agana, GU 96910 Attn: Harry Uttam, Manager		\$0.00	

* Findings for the total amount of losses are required by Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOSEPH G. TUNCAP
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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A Lump sum payment of \$ 104,354.58 due immediately, balance due

not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

ALL PAYMENTS SHOULD BE MADE IMMEDIATELY OR DURING THE TERM OF INCARCERATION.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

REFER TO PAGE 9.

The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: JOSEPH G. TUNCAP
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ADDITIONAL DEFENDANTS AND CO-DEFENDANTS HELD JOINT AND SEVERAL

Case Number Defendant and Co-Defendant (including defendant numbers)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
CR 97-00158, Rudy P. Abarca	\$58,153.67	\$35,039.00	Payless Supermarkets, Inc.
CR 98-00015, Mark A. Perez	\$58,153.67	\$21,290.36	Payless Supermarkets, Inc.
CR 98-00084, Peter L.G. Cruz	\$58,153.67	\$1,824.31	Payless Supermarkets, Inc.
CR 97-00158, Rudy P. Abarca	\$8,363.42	\$1,987.75	D.S. Corporation dba Bunny Market
CR 98-00015, Mark A. Perez	\$8,363.42	\$495.82	D.S. Corporation dba Bunny Market
CR 98-00084, Peter L.G. Cruz	\$8,363.42	\$3,988.05	D.S. Corporation dba Bunny Market
CR 99-00007, MaryJane S.N. Cruz	\$8,363.42	\$495.30	D.S. Corporation dba Bunny Market
CR 98-00084, Peter L.G. Cruz	\$450.65	\$450.48	First International Corporation dba A-1 Store
CR 97-00158, Rudy P. Abarca	\$859.25	\$859.25	Rustan's Foreign Exchange
CR 97-00158, Rudy P. Abarca	\$2,187.57	\$993.45	New J Market
CR 97-00158, Mark A. Perez	\$2,187.57	\$495.82	New J Market
CR 97-00158, Rudy P. Abarca	\$12,534.75	\$894.25	Townhouse Department Store
CR 99-00007, MaryJane S.N. Cruz	\$12,534.75	\$2,929.30	Townhouse Department Store
CR 97-00158, Rudy P. Abarca	\$3,500.25	\$3,500.25	Guam Savings & Loan Association
CR 97-00158, Rudy P. Abarca	\$3,794.78	\$1,986.90	Kim Chee Store nka Kim Chee Warehouse Grocers
CR 98-00015, Mark A. Perez	\$3,794.78	\$495.82	Kim Chee Store nka Kim Chee Warehouse Grocers
CR 98-00009, Evelyn S.N. Cruz	\$3,794.78	\$1,312.06	Kim Chee Store nka Kim Chee Warehouse Grocers
CR 97-00158, Rudy P. Abarca	\$5,083.69	\$5,083.69	Valencia Foreign Exchange aka Valencia Bros. Foreign Exchange
CR 99-00007, MaryJane S.N. Cruz	\$991.40	\$990.60	Deloitte & Touche
CR 99-00009, Evelyn S.N. Cruz	\$5,528.00	\$5,528.00	MV Pangelinan Enterprise
CR 99-00009, Evelyn S.N. Cruz	\$2,410.00	\$2,410.00	Guam Supermarket